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EXAMINER

CAMPBELL, KELLY E

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/007,128

Applicant(s)

TAYLOR ET AL.

Examiner

Kelly E Campbell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_.  
2a) This action is FINAL.                            2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-134 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_ is/are allowed.  
6) Claim(s) 1-134 is/are rejected.  
7) Claim(s) \_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.  
12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.  
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                            4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) Other:

**.DETAILED ACTION**

***Claim Objections***

Claims 16-19 and 32-35 are objected to because of the following informalities:

Claims 16,32,52,72,92 and 114 disclose "...having enhanced properties...";

Claims 17,33,53,73,93 and 115 disclose "...upper portion of said snow gasket has better stretch properties...";

Claims 18,34,54,74,94 and 116 disclose "...intermediate portion of said snow gasket has better abrasion resistance...";

Claims 19,35,55,75,95 and 117 disclose "lower portion has better durability properties...";

and, it is unclear how the applicant intends to define the terms "enhanced" or "better" as relates to the structure of the invention. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-11, 13-20, 22-27, 29-36, 38-47, 49-56, 58-67, 69-76, 78-87, 89-96, 98, 100, 103-109 and 111-118, are rejected under 35 U.S.C. 102(b) as being anticipated by Messmer (US 6,138,384).

Messmer teaches a snowboard boot binding (2) including:

a base (3) having a foot receiving area, see Figure 1, including a floor that is constructed and arranged for mounting the snowboard boot binding to a snowboard, see Column 3, lines 26-27, the snowboard binding (2) including: a rear support member (5) for surrounding at least a portion of a rider's leg and which extends rearwardly and upwardly from the base floor (3), see Figure 1, wherein an opening (silent) shown in Figure 1, extends between a rearward edge of the base floor (3) and the rear support member (5), the opening (silent) adapted to receive at least a portion of a heel end (15) of a snowboard boot (9) that has been inserted into the boot binding, see column 3, lines 29-34 and lines 47-62;

wherein the base (3) includes rigid rear, medial, lateral walls and floor, silent, see Figure 1, see column 3, lines 21-25;

a boot engagement member (6,7,8) for securing the snowboard boot to the binding (2);

wherein the boot engagement member (6,7,8) includes at least one of a strap-type member (8);

a snow gasket (12) for covering at least a portion of the opening (silent) to prevent snow from passing through the opening and a boot engagement member;

and wherein the rear support member (5) is a heel loop and integrally formed with the base (3), see Figure 1;

and wherein the snow gasket (12) includes a floor or bottom edge, and a bottom of the snow gasket floor (silent) is located above a bottom rearward edge of the base floor (3) since the gasket (12) is disposed on top of the base floor (3), see Figure 1;

wherein the snow gasket (12) includes a rear end or rear wall, a lateral side or sidewall, a medial side or sidewall, and a floor, see Figure 1,

wherein a lower end (12) of the snow gasket is composed of rubber or similar material and thus has variable shape and is compliant and will assume the general shape of a heel end of a snowboard boot (9) upon insertion of the snowboard boot (9) into the snowboard binding (2), see Column 3, lines 29-55;

wherein the heel portion of the snow gasket (12) is cup-shaped;

the snow gasket is (12) is removably attached to the base (3), see Figure 2,

the snow gasket (12) has an upper region (11) composed of a material different than the lower region (12) and having a different elasticity, durability and abrasion resistance, see Column 3, lines 35-45;

wherein the snow gasket (12) includes a lower end and an upper end (11) and the snow gasket (12) is biased towards an upper end, see Figure 2;

and wherein the snow gasket (12) includes a frame (13), see Figure 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4,99,101-102,120-125 and 127-134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messmer (US 6,138,384).

Messmer discloses all aspects of the claimed invention as discussed above for claim 2, except the rear support member of the snowboard binding being separate and distinct from the base.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rear support member of the binding to be a separate and distinct component from the base, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177,179.

With regards to claims 120-125 and 127-134, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

With regards to claims 99 and 101, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material

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of the snow gasket to be the same as the rigid plastic material of the rigid heel insert (13) and base plate (3), see Column 3, lines 47-54, the since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 21,37,57,77,97 and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messmer (US 6,138,384) as applied to claim 1,22,38, 58,78, or 98 above, and further in view of Laughlin et al (US 6,123,354).

Messmer discloses all aspects of the claimed invention as discussed above for claim 1, 22,38, 58,78, and 98, except the binding including a strapless member.

Laughlin et al teaches a snowboard binding (3) including a base (11) having a foot receiving member, rear support heel loop and a strapless boot engagement members (7), see Column 4, lines 60-67.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the boot binding with a strap engagement member with a strapless engagement member as taught by Laughlin et al in order to more securely fix the boot to the snowboard binding for safety purposes.

Claims 12,28,48,68,88, 110 and 126 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messmer (US 6,138,384) as applied to claims 11,27,47,57,87, or 109 above, and further in view of Gonthier (US 6,402,164).

Messmer discloses all aspects of the claimed invention as discussed above for claim 11,27,47,57,87, and 109 except the snow gasket including a mesh-type fabric.

Gonthier discloses a snowboard binding including a rear portion (19) comprised of a "mesh-type" fabric, see Figure 1.

Mesh is defined as " a woven, knit or knotted material of open texture with evenly spaced holes", per Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> edition, © 2000.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the snowboard binding with gasket having an upper fabric section and lower rubber section as taught by Messmer such that the fabric section is a mesh-type fabric as taught by Gonthier, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perry (US 3,398,969) discloses a ski boot attachment including a cup-shaped rear heel member. Finiel (US 6,328,328) discloses a snowboard boot binding and gasket.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E Campbell whose telephone number is

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(703) 605-4264. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



KEO

April 7, 2003

BRIAN L. JOHNSON  
SUPervisor, EXAMINER  
TELEPHONE: 308-0885